

(2025) 01 DEL CK 1734

In the Delhi High Court

Case No : Writ Petition (C) No. 2818 Of 2006, Civil Miscellaneous Application
Nos. 2544 Of 2006 & 19356 Of 2022

Om Prakash LakhinaVs UOI & Ors

Date of Decision : 21-01-2025

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2025) 01 DEL CK 1734

Hon'ble Judges : Prateek Jalan, J

Bench : Single Bench

Advocate : Sonal Kumar Singh, Yashvardhan Singh, Pallav Shishodia, Parveen Kumar Mehdiratta, Pankaj Kumar

Final Decision : Disposed Of

Judgement

Prateek Jalan, J.

1. By way of this writ petition, filed in the year 2006, the petitioner seeks relief against an order dated 11.11.2005, dismissing him from service. The order was passed by respondent No. 2 - UTI Asset Management Company (P) Ltd.

2. The petition was filed on the premise that the respondent –Company was “presently regulated by the four PSU entities LIC Of India, Bank Of Baroda, Punjab National Bank, State Bank Of India and is under the pervasive control” of Union of India [“UOI”] Paragraph No. 2 of writ petition.

3. During the pendency of the writ petition, respondent No. 2 has filed additional affidavits dated 06.03.2024 and 05.08.2024, contesting the maintainability of a petition under Article 226 of the Constitution, in respect of a service dispute against it. It is stated therein that respondent No. 2 is professionally managed by its Board of Directors, and does not function under the financial or administrative control of UOI in any manner. Its shares are listed, and 30.75% are owned by the public.

4. Mr. Pallav Shishodia, learned Senior Counsel for respondent No. 2, relies upon a judgment of the Coordinate Bench of this Court in Anil Kumar Anand v. Union

of India and others¹, and connected matters 2023 SCC OnLine Del 8229, which has been upheld by the Division Bench in Anil Kumar Anand v. Union of India and Others 2024 SCC OnLine Del 2605, which concern the very same respondent-company. Copies of the said judgments have also been placed on record.

5. The judgment of the coordinate Bench deals with six writ petitions filed by an employee of respondent No. 2 herein. After tracing the factual developments with regard to disinvestment in the shares of respondent No. 2, the Court came to a conclusion that the writ petitions were not maintainable. The petitioner therein was granted liberty to take recourse to alternative remedies, and to seek exclusion of the period spent in pursuing the writ petitions for the purposes of limitation.

6. The petitioner therein approached the Division Bench against the aforesaid judgments, but his appeals were dismissed by judgment dated 09.04.2024.

7. Mr. Sonal Kumar Singh, learned counsel for the petitioner, accepts that these judgments concern the very same employer against whom the present writ petition has been filed, however, he submits that the Court has not considered the fact that the respondent-company was amenable to the writ jurisdiction of the Court when the writ petition was filed.

8. I am unable to accept this contention. It may be noted at the outset that, quite apart from the fact that the aforesaid judgements are binding upon me, the Coordinate Bench did allude to "...the status of employees after a body which was previously amenable to the writ jurisdiction, but due to disinvestment, such body is no longer falling within the meaning of State..." Supra (Note 1), paragraphs 60 and 68.

9. This issue is also squarely covered by the judgment of the Supreme Court in R.S. Madireddy v. Union of India 2024 SCC OnLine SC 965, which states as follows:

"29. It is thus, seen that various High Courts across the country have taken a consistent view over a period of time on the pertinent question presented for consideration that the subsequent event i.e. the disinvestment of the Government company and its devolution into a private company would make the company immune from being subjected to writ jurisdiction under Article 226 of the Constitution of India, even if the litigant had entered the portals of the Court while the employer was the Government. The only exception is the solitary judgment of the Division Bench of Calcutta High Court in Ashok Kumar Gupta (supra), which was distinguished by the learned Single Judge of the Gujarat High Court in the case of Kalpana Yogesh Dhagat (supra) and rightly so, in our opinion, we have no hesitation in holding that the view taken in the judgments of Kalpana Yogesh Dhagat (supra) (by the High Court of Gujarat); Asulal Loya (supra)(by the High Court of Delhi) and Tarun Kumar Banerjee (supra)(by the High Court of Bombay) is the correct exposition on this legal issue and we grant full imprimatur to the said proposition of law.

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33. Once the respondent No. 3(AIL) ceased to be covered by the definition of State within the meaning of Article 12 of the Constitution of India, it could not have been subjected to writ jurisdiction under Article 226 of the Constitution of India.

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38. The question of issuing a writ would only arise when the writ petition is being decided. Thus, the issue about exercise of extra ordinary writ jurisdiction under Article 226 of the Constitution of India would arise only on the date when the writ petitions were taken up for consideration and decision. The respondent No. 3(AIL)-employer was a government entity on the date of filing of the writ petitions, which came to be decided after a significant delay by which time, the company had been disinvested and taken over by a private player. Since, respondent No. 3 employer had been disinvested and had assumed the character of a private entity not performing any public function, the High Court could not have exercised the extra ordinary writ jurisdiction to issue a writ to such private entity. The learned Division Bench has taken care to protect the rights of the appellants to seek remedy and thus, it cannot be said that the appellants have been non-suited in the case. It is only that the appellants would have to approach another forum for seeking their remedy. Thus, the question No. 2 is decided against the appellants.

39. By no stretch of imagination, the delay in disposal of the writ petitions could have been a ground to continue with and maintain the writ petitions because the forum that is the High Court where the writ petitions were instituted could not have issued a writ to the private respondent which had changed hands in the intervening period. Hence, the question No. 3 is also decided against the appellants.” Emphasis supplied

10. Mr. Singh relies upon the judgment of the Supreme Court in *Beg Raj Singh v. State of U.P* (2003) 1 SCC 726 in support of his contention that the petitioner’s rights crystalises upon filing of the writ petition. However, the later judgment in *R.S. Madireddy Supra* (note 4), considers the judgment in *Beg Raj Singh Supra* (note 6), and comes to the conclusion established above. That view must therefore be followed *Gregory Patrao and Ors v. Mangalore Refinery and Petrochemicals Limited and Ors.*[(2022) 10 SCC 461] (paragraph 16).

11. For the aforesaid reasons, the present writ petition is not maintainable, and is disposed of, with liberty to the petitioner to invoke alternative remedies available to him in law. The petitioner may seek the benefit of Section 14 of the Limitation Act, 1963, before the concerned forum, for the period the present writ petition has been pending in this Court. Mr. Shishodia states that respondent No. 2 will not object to such exclusion. All rights and contentions of the parties on merits are reserved.